

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

CIVIL NO. 5:09CR27

UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
Plaintiff,                   )  
                                  )  
                                  )  
v.                             )  
                                  )  
1) BERNARD VON NOTHAUS, )  
                                  )  
                                  )  
Defendant.                   )

HEARSAY IS ADMISSIBLE DURING THE FORFEITURE PHASE

COMES NOW THE UNITED STATES and points out that “because forfeiture is viewed as part of the sentencing process . . .hearsay is admissible.” *United States v. Evanson*, 2008 WL 3107332, 2 (D. Utah 2008). “[T]raditional rules of evidence do not apply in determining issues related to criminal forfeiture.” *United States v. Ivanchukov*, 405 F. Sup. 2d 708, 709 n. 1. Fed. R. Crim. P. 32.2(b)(1) provides that a finding of forfeiture may be based “on evidence *or information* presented by the parties at a hearing after . . . the finding of guilt”(emphasis added). “United States courts have a long history of using reliable hearsay for sentencing.” *United States v. Higgs*, 353 F.3d 281, 324 (4th Cir. 2003). “A trial court may properly consider uncorroborated hearsay evidence that the defendant has had an opportunity to rebut or explain.” *Id.*

Respectfully submitted this the 17<sup>th</sup> day of March, 2011

ANNE M. TOMPKINS  
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s/ THOMAS R. ASCIK  
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CERTIFICATE OF SERVICE

I hereby certify that the Government's Exhibit List was duly served upon defense counsel via ECF at the following address:

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